

1  
2  
3  
4  
5  
6  
7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN JOSE DIVISION**  
11

12 THE OTTER PROJECT and )  
13 ENVIRONMENTAL DEFENSE CENTER, )

14 Plaintiffs, )

15 v. )

16 KEN SALAZAR, Secretary of the United )  
17 States Department of the Interior, DANIEL )  
18 ASHE, Director of the U.S. Fish & Wildlife )  
19 Service, UNITED STATES )  
20 DEPARTMENT OF THE INTERIOR, )  
21 UNITED STATES FISH & WILDLIFE )  
22 SERVICE, )

21 Defendants, )

22 CALIFORNIA SEA URCHIN )  
23 COMMISSION, PETER HALMAY, )  
24 HARRY LIQUORNIK, CALIFORNIA )  
25 ABALONE ASSOCIATION, SONOMA )  
26 COUNTY ABALONE NETWORK, )

27 Intervenor-Defendants. )  
28

No. C 09-4610 JW

**STIPULATION TO AMEND  
STIPULATED SETTLEMENT  
AGREEMENT AND ~~PROPOSED~~  
ORDER**

Pursuant to Local Rule 7-12, this Stipulation is entered into by and between Plaintiffs, The Otter Project and Environmental Defense Center, Defendants, Ken Salazar, in his official capacity as Secretary of the United States Department of the Interior; Daniel Ashe, in his official capacity as Director of the United States Fish and Wildlife Service (“Service”); the United States Department of the Interior; and the Service (collectively, “Federal Defendants”), and Intervenor-Defendants, California Sea Urchin Commission; Peter Halmay; Harry Liquornik; California Abalone Association; Sonoma County; and County Abalone Network. By and through their undersigned counsel, the parties state as follows:

WHEREAS, on December 23, 2009, Plaintiffs filed a First Amended Complaint for Declaratory and Injunctive Relief in the above-captioned case, alleging that the Service unreasonably delayed a decision on whether the southern sea otter translocation program has failed according to the five failure criteria at 50 C.F.R. § 1784(d)(8), in violation of the Administrative Procedure Act, 5 U.S.C. § 555(b);

WHEREAS, on November 22, 2010, the parties, through their authorized representatives, entered into a Stipulated Settlement Agreement, ECF No. 66, resolving the claims set forth in Plaintiffs’ First Amended Complaint;

WHEREAS, on November 23, 2010, the Court approved the Stipulated Settlement Agreement and ordered dismissal with prejudice of the action, ECF No. 67;

WHEREAS, the Stipulated Settlement Agreement requires the Service to submit to the Federal Register a notice of a final determination on the proposed rule amending 50 C.F.R. § 17.84(d) on or before December 7, 2012;

WHEREAS, the Stipulated Settlement Agreement allows this deadline to be modified upon good cause shown by written stipulation between the parties filed with and approved by the Court, ECF No. 67 at 4;

WHEREAS, Notice of the Availability of a Final Supplemental Environmental Impact Statement on the Translocation of Southern Sea Otters Program was published by the Environmental Protection Agency on November 9, 2012, 77 Fed. Reg. 67362 (Nov. 9, 2012);

1 WHEREAS, pursuant to 40 C.F.R. § 1506.10(b)(2), the Service shall not make a final  
2 determination on a proposed action until at least 30 days after publication of the notice of  
3 availability of the relevant final environmental impact statement;

4 WHEREAS, the Service requires additional time to comply with 40 C.F.R. §  
5 1506.10(b)(2) before it may submit a notice of a final determination on the proposed rule  
6 amending 50 C.F.R. § 17.84(d);

7 WHEREAS, the Service shall submit to the Federal Register a notice of a final  
8 determination on the proposed rule amending 50 C.F.R. § 17.84(d) on or before December 14,  
9 2012;

10 WHEREAS, on November 8, 2012, Plaintiffs' and Intervenor-Defendants' counsel  
11 consented to this 7-day extension of time.

12  
13 NOW, THEREFORE, the parties hereby stipulate and agree as follows:

- 14 1. On or before December 14, 2012, the Service shall submit to the Federal Register a  
15 notice of a final determination on the proposed rule amending 50 C.F.R. § 17.84(d).

16  
17 DATED this 14th day of November, 2012.

18  
19 Respectfully Submitted,

20 /s/ Brian Segee (as authorized 11/14/2012)

21 Linda J. Krop (No. 118773)

22 Brian Segee (No. 200795)

23 Environmental Defense Center

24 906 Garden Street

25 Santa Barbara, CA 93101

26 Phone: (805) 963-1622

27 Fax: (805) 962-3152

28 Email: bsegee@EnvironmentalDefenseCenter.org

Attorneys for Plaintiffs

IGNACIA S. MORENO, Assistant Attorney General

SETH M. BARSKY, Section Chief

KRISTEN L. GUSTAFSON, Assistant Chief

/s/ Mary Hollingsworth

MARY HOLLINGSWORTH (AZ Bar No. 027080)

Trial Attorney

U.S. Department of Justice

Environment & Natural Resources Division

Wildlife & Marine Resources Section

Ben Franklin Station

P.O. Box 7611

Washington, DC 20044-7611

Phone: (202) 305-0324

Fax: (202) 305-0275

Email: [mary.hollingsworth@usdoj.gov](mailto:mary.hollingsworth@usdoj.gov)

Attorneys for Federal Defendants

/s/ George J. Mannina, Jr. (as authorized 11/14/2012)

George J. Mannina, Jr. (D.C. Bar No. 316943)

*Pro hac vice*

NOSSAMAN LLP

1666 K St., N.W., Suite 500

Washington, D.C. 20006

Phone: (202) 887-1400

Fax: (202) 466-3215

Email: [gmannina@nossaman.com](mailto:gmannina@nossaman.com)

Attorney for Intervenor-Defendants

**ATTORNEY ATTESTATION OF CONCURRENCE**

I hereby attest that I have obtained concurrence in this filing and for affixing the signature of Plaintiffs' and Intervenor-Defendants' counsel, indicated by a "conformed" signature ("/s/"), to this e-filed document, in accordance with Local Rule 5-1(i)(3).

**PURSUANT TO STIPULATION, IT IS SO ORDERED**

Dated: this 14th day of November, 2012.



UNITED STATES DISTRICT JUDGE

	)	
THE OTTER PROJECT, et al.,	)	No. C 09-4610 JW
	)	
Plaintiffs,	)	
	)	<b>CERTIFICATE OF SERVICE</b>
v.	)	
	)	
KEN SALAZAR, et al.,	)	
	)	
Defendants,	)	
	)	
CALIFORNIA SEA URCHIN	)	
COMMISSION, et al.,	)	
	)	
Intervenor-Defendants.	)	
	)	

/s/ Mary Hollingsworth  
Mary Hollingsworth